

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.07.2007

C O R A M :

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No. 25435 of 2001
and WPM.P.No.18206 OF 2006
AND WVMP.NO.241 OF 2006

1. Madurai District Central Co.operative
Bank Employees Union
(Regd.No.31/MDU)
187, North Veli Street
Madurai 625 001.

2. A. Pandi

...Petitioners

-vs-

1.The State of Tamil Nadu
rep. By its Secretary
Co.operation, Food and
Consumer Protection Department
Fort St. George, Chennai 600 001.

2.Registrar of Co.operative Societies
N.V. Natarajan Building
No.170, E.V.R. Periyar High Road
Kilpauk, Madras 10.

3.Madurai District Central
Co.operative Bank
rep. By its Special Officer
187 North Veli Street
Madurai 625 001.

4.R. Alagarsamy
5.R. Perumal
6.B. Marimuthu
7.N.S. Subramanian
8.K. Radhakrishnan
9.K. Perumal
10.S. Thilagar
11.G. Varadharajan
12.P. Surlimuthu

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13.G. Thangaraj

14.A. Suruli ..

R4 to R14 impleaded as per order dated
17.3.2005 in WMP NO. 3829/04

15.M.D.C.C. Bank Staff Union

Regd.No.947.MDU

(42-B) New No.99 South Main Street

Madurai 625 001. ..

R15 impleaded as per order dated

18.10.2005 in WMP NO. 29696/05

16.R. Chellandi

17.O. Subba Reddiar

18.S. Rathinam

19.V. Gururajan

20.G. Muthiah

21.S. Subash Chandran

22.M. Murugan .. Respondents

R16 to 22 impleaded as per order dated

3.3.06 in WPMP NO. 307/06

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration as stated therein.

For petitioners

::: Mr. Govardhanan
for M/s. Row & Reddy

For respondents

::: Mr. K. Balu
Addl. Govt. Pleader for R.2 and R.2

Mr. S. Silambannan, Sr. Counsel
for M/s. Silambannan Assts. For R.3

Ms. S. Sujatha
for M/s. P. Chandrasekaran for R.4 to R.14

Mr. S. Arunachalam for R.15

Mr. M. Damodaran for R.16 to R.22.

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ORDER

This writ petition is filed for declaration that the letter of the second respondent, viz., the Registrar of Co-operative Societies, Chennai, dated 16.11.2001, is illegal and contrary to G.O.No.203 Co.operation, Food and Consumer Protection Department, dated 21.05.2001, issued by the first respondent-Government and consequently direct the third respondent to grant Selection Grade to the Members of the petitioner Union from the date of completion of 12 years of service in the revised Assistant and Sub-Staff cadre in terms of the above said Government Order.

2. The petitioner Union is a Trade Union of the employees of third respondent, Madurai District Central Co-operative Bank. According to the petitioner, the third respondent Bank is registered under the Tamil Nadu Co-operative Societies Act, 1983. As per the settlement entered into between the employees and the third respondent under Section 18 (1) of the Industrial Disputes Act, 1947 (in short, "the I.D. Act") dated 09.12.1978, there were 12 categories of employees, viz.,

- (i) Assistant Secretary;
- (ii) Manager;
- (iii) Executive Officer/Development Officer;
- (iv) Section Superintendent/Agent/Chief Cashier;
- (v) Accountant/Senior Supervisor;
- (vi) Cashier/Supervisor/Typist;
- (vii) Senior Typist;
- (viii) Telephone Operator;
- (ix) Junior Supervisor No.I;
- (x) Junior Supervisor No.II;
- (xi) Messengers/Watchmen; and
- (xii) Drivers.

The categories contained in Serial Nos.4 to 12 are workmen as per Section 2(s) of the I.D. Act. The petitioner states that by a subsequent settlement dated 23.05.1987, the said 12 categories of employees were reduced to 8 in number and that was the settlement entered under Section 12 (3) of the I.D. Act. It is the further case of the petitioner that the said categories were once again revised by subsequent settlement dated 08.01.1991 and also 17.02.1997 and ultimately, the 12 categories mentioned in the year 1987 were finally reduced to 6 in number, viz.,

- (i) General Manager;
- (ii) Assistant General Manager;
- (iii) Manager;
- (iv) Assistant Manager;

- (v) Assistant; and
- (vi) Sub Staff.

3. According to the petitioner Union, since various categories have been merged and seniors and juniors have been brought as Assistant and Sub-Staff cadres respectively, they have requested for a creation of Selection Grade as a different category to identify the seniors and juniors. Therefore, it was agreed in the settlement under Section 12 (3) of the Act dated 17.02.1997 that employees who have put in 15 years of service or more in the same cadre upto the level of Assistant General Manager (Assistant Secretary) would be fitted in Selection Grade upon determination of special pay scale by a separate committee. According to the petitioner, the said settlement is in force and has not been superseded, and no notice under Section 9-A of the I.D. Act has been given for the purpose of altering the service condition. After persuasion, the Government has passed G.O.Ms.No.203 dated 21.05.2001, under which the Government has directed Selection Grade to a person who had put in 12 years of service in one particular category. According to the petitioner, the Government Order specifically states that the total years of service from the date of joining has to be taken for the purpose of granting Selection Grade.

4. According to the petitioner, even before the said Government Order, the second respondent by letter dated 02.12.1993, has informed the Joint Registrar of all Regions to streamline the cadre strength and the pay scale of employees of Primary Land Development Banks and directed that the Selection Grade/Special Grade, the grade of Clerks /Supervisors may be integrated and the grades were to be decided based on the length of their service and according to the petitioner Union based on the said direction of the second respondent dated 02.12.1993, Selection Grade was given to the employees of Primary Land Development Banks taking into consideration their initial date of entry into service. According to the petitioner, in respect of the employees of the third respondent Bank, due to the confusion created by the third respondent, the second respondent has given the impugned clarification dated 16.11.2001 stating that the Selection Grade would be given only on and from 01.07.1974 as the different categories were merged only on the said date. It is as against the said impugned clarification of the second respondent dated 16.11.2001, the petitioner Union has filed the present writ petition and for direction to follow G.O.Ms.No.203 dated 21.05.2001, issued by the Government in respect of grant of Selection Grade. According to the petitioner Union, the impugned clarification letter by the second respondent is against G.O.Ms.No.203 dated 21.05.2001. It is also the case of the petitioner Union that the Government has also issued G.O.Ms.No.144, Co.operation, Food and Consumer Protection

Department, dated 06.07.2000, permitting the respective Co-operative Banks to grant Selection Grade to those who have completed 12 years of service and therefore, in all fairness the second respondent should have followed the same in respect of employees of the third respondent Bank also especially in the presence of the subsequent G.O.Ms.No.203 dated 21.05.2001.

5. The first and second respondents have filed a counter affidavit. It is the case of the said respondents that under G.O.Ms.No.144 Co.operation, Food and Consumer Protection Department, dated 06.07.2000 in respect of the employees of the District Central Co-operative Banks, those employees who have been completed 12 years in the same category were directed to be given Selection Grade of pay with effect from 01.07.1994 and it was on that basis the Government has issued the subsequent G.O.Ms.No.203 Co-operation, Food and Consumer Protection Department, dated 21.05.2001. It is the case of the first and second respondents that even during the time when the settlements were entered under Section 12(3) of the I.D. Act, the employees of the service Association of the District Central Co-operative Banks have not informed about the payment of additional increments already sanctioned to the employees. On receipt of the Government Order, instructions were issued to the District Central Co-operative Banks to fix the Selection Grade pay to the employees who have completed 12 years with effect from 01.07.1994 and adjust the financial benefits in the sanction of one increment already extended

6. Various Central Co-operative Banks including the third respondent bank have sought clarification in fixing pay in the Selection Grade Scale as approved by the Government in G.O.No.144 dated 6.7.2000. It was after examining the whole subject carefully, the above clarification dated 16.11.2001 was given and in respect of Madurai District Central Co-operative Bank, the second respondent has directed that the Selection Grade may be given to the Sub-staff on completion of 12 years, for Junior Supervisor/Junior Assistants, Selection Grade may be given on completion of 12 years service from 1.7.1974, from which date the above posts have got merged as Assistant. It was after the said G.O.144 was issued, the Trade Unions have made representation to the Government demanding that the scale of pay of next promotional post of an employee should be given as his Selection Grade scale of pay and to add one notional increment in the ordinary grade scale while fixing pay in the Selection Grade scale of pay as given to the Government servants and also for employees of Co-operative Whole sale Stores. It was after examining the said demand, the Government issued G.O.No.203 Co.operation, Food and Consumer Protection Department, dated 21.05.2001, accepting for adding one notional increment in the ordinary scale while fixing the pay in Selection Grade. Therefore, according to the first and

second respondents, while G.O.No.144 prescribes calculation of 12 years of service to confer Selection Grade, G.O.No.203 merely says the fitment procedure in the Selection Grade and therefore G.O.203 was not in respect of the qualified length of service to convert Selection Grade. It is also the case of the 1st and 2nd respondents that neither G.O.No.144 nor G.O.No.203 provides the total years of service from the date of joining to be taking into consideration for granting Selection Grade. It is the further specific case of the 1st and 2nd respondents that the 2nd respondent has never directed the 3rd respondent not to implement the Government Orders and according to the 2nd respondent, the letter dated 16.11.2001 is not arbitrary.

7. I have heard the learned counsel appearing for the petitioner as well as learned counsel for the respondents and perused the records.

8. A reference to G.O.Ms.No.203 Co-operation, Food and Consumer Protection Department, dated 21.5.2001 shows that the said G.O. was issued by the Government in continuation of the earlier G.O., viz., G.O.Ms.No.144 Co-operation, Food and Consumer Protection Department, dated 6.7.2000. It was after considering the letters of the Registrar of Co-operative Societies, the Government in G.O.Ms.No.203 has directed that as it was given for the employees of the Primary Land Development Banks, the fixation of pay was ordered in respect of employees of the Central Co-operative Banks converting them to Selection Grade from 1.7.1994. A reference to the previous G.O.Ms.No.144, dated 6.7.2000 shows that the Selection Grade was directed to be given after completion of 12 years from 1.7.1994. Therefore, it is clear that while G.O.Ms.No.144 relates to converting Selection Grade, the subsequent G.O.Ms.No.203 dated 21.5.2001 relates to the fixation of pay for those who have been given Selection Grade with effect from 1.7.1994. It was considering the admitted fact that there has been merger of various categories of employees in the 3rd respondent Bank from 1.7.1994, based on the abovesaid Government Orders, the 2nd respondent has clarified that those who have completed 12 years of service on 1.7.1994 should be granted Selection Grade.

9. In respect of Messengers Grade-I, since they have been granted special pay, they were directed to be given Selection Grade after completion of 12 years from 1.7.1980. Likewise, in respect of Messengers Grade-II, they could be given Selection Grade after completion of 12 years and if they have completed 12 years before 1.7.1994, Selection Grade has to be conferred on 1.7.1994 and if they have completed Selection Grade after 1.7.1994, next day after the completion of 12 years they are directed to be given Selection Grade. In the said clarification, while dealing with Junior Supervisors it is stated the post of

Junior Supervisor Grade II was merged with Junior Supervisor Grade I as on 1.7.1989. Thereafter, on 1.7.1994, the posts of Junior Supervisor Grade-I and Junior Assistant were merged with Assistant and therefore, there has been upgrading of the post twice and as such, Junior Supervisor Grade-I, Junior Supervisor Grade-II and Junior Assistant were directed to be given Selection Grade 12 years after 1.7.1994.

10. The contention that the wordings of G.O.2(D)No.69, Co-operation, Food and Consumer Department dated 12.11.1993 in respect of Primary Land Development Banks have to be read part of G.O.No.144 is not sustainable, since the said G.O.No.69 relates to the principles evaluated for the purpose of streamlining the cadre strength for the employees of Primary Land Development Bank based on the recommendation of Streamlining Committee which has no relevance to the present case at all. Even as recommended by the Streamlining Committee constituted under the above said G.O., after completion of 10 years or 20 years, Selection Grade or Special Grade was to be given with effect from a particular date, viz., from 1.7.1994. But, in the present case in respect of 3rd respondent Bank when there was a merger of various grades by which, as enumerated above, there has been two jump of higher post in these categories, I do not think that fixing of date viz., 1.7.1994 for converting Special Grade is either arbitrary or illegal. G.O.Ms.No.144 and G.O.Ms.No.203 are distinct and independent and they have nothing to do with G.O.No.69 relating to the Primary Land Development Bank employees. The mere statement of Registrar of Co-operative Societies in the letter dated 1.6.2001 informing the Special Officers about G.O.No.69 dated 12.11.1993 does not mean that the principle contained in the said G.O. has to be followed in all circumstances.

11. On the face of it, I do not see any contradiction between the impugned letter of the 2nd respondent dated 16.11.2001 and G.O.Ms.No.144 dated 6.7.2000 and G.O.Ms.No.203, Co-operation, Food and Consumer Protection Department dated 21.5.2001. As I have stated above, G.O.No.144 dated 6.7.2000 and G.O.No.203, dated 21.5.2001 are relating to converting Selection Grade and fixation of Selection Grade Pay respectively and the conversion has been given with effect from 1.7.1994 and in fact, it is specifically admitted by the respondents 1 and 2 in the counter affidavit that they are not giving any direction to the 3rd respondent not to implement G.O. stated above. In view of the above stated facts,

the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Secretary
State of Tamil Nadu
Co.operation, Food and
Consumer Protection Department
Fort St. George, Chennai 600 001.
2. The Registrar of Co.oprative Societies
N.V. Natarajan Building
No.170, E.V.R. Periyar High Road
Kilpauk, Madras 10.
- 3.The Special Officer
Madurai District Central
Co.operative Bank
187 North Veli Street
Madurai 625 001.

+ one cc to M/s. Row and Reddy, Advocate sr no. 42301
+ one cc to Mr. N. Damodaran, Advocate sr no. 42652
+ one cc to Mr. S. Arunachalam, Advocate sr no. 42674
+ one cc to M/s. Chandrasekaran Associates sr no. 42924

ka(co)_
nm(19.07.07)

W.P.No.25435 of 2001